

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Administration

Council Meeting Date: 6/13/2013

Department Contact: Rex Reynolds

Phone # 427-5009

Contract or Agreement: Agreement between the City of Huntsville and Sammy T's Music Hall, LLC.

Document Name: Temporary Lease Agreement between the City of Huntsville and Sammy T's Music Ha...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

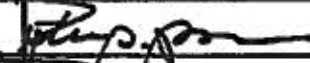
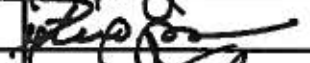
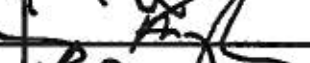

Account Number:

Procurement Agreements

Select...	Select...
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Grant-Funded Agreements

Select...	Grant Name:
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Department	Signature	Date
1) Originating		6.10.13
2) Legal		6.10.13
3) Finance		6/10
4) Originating		6-10-13
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 6/13/2013

Action Requested By:
Administration

Agenda Item Type
Resolution

Subject Matter:

Resolution authorizing Mayor to enter into a Temporary Lease Agreement between the City of Huntsville and Sammy T's Music Hall, LLC for Downtown Summerfest Street Party

Exact Wording for the Agenda:

Resolution authorizing Mayor to enter into a Temporary Lease Agreement between the City of Huntsville and Sammy T's Music Hall, LLC for Downtown Summerfest Street Party

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: N/A

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head:  Date: _____

RESOLUTION NO. 13-_____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare in accordance with Code of Alabama (1975) that the Mayor be, and is hereby authorized to enter into a Temporary Lease Agreement by and between the City of Huntsville and Sammy T's Music Hall, LLC., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Temporary Lease Agreement by and between the City of Huntsville and Sammy T's Music Hall, LLC." consisting of eight(8) pages including Exhibit "A", and the date of June 13th, 2013 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 13th day of June, 2013

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 13th day of June, 2013.

Mayor of the City of
Huntsville, Alabama

TEMPORARY LEASE AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE
AND SAMMY T'S MUSIC HALL, LLC.

LEASE AGREEMENT

This Temporary Lease Agreement ("Agreement") is made and entered into on the 13th day of June, 2013, by and between the City of Huntsville, a municipal corporation in the State of Alabama, hereinafter referred to as "City," and Sammy T's Music Hall, LLC., hereinafter referred to as "STMH".

Subject to the terms and conditions hereinafter set forth, the City agrees to lease to STMH for the period of time beginning at 7:00 p.m. Friday, the 16th day of August, 2013, through and including 6:00 a.m. on the 18th day of August, 2013, for the area generally described or depicted on the map attached hereto as Exhibit "A," hereinafter referred to as the "Premises" which is made a part of this Agreement as if fully set out herein.

1. *Use of premises; timing.*

(a) STMH agrees that the Premises shall be used for an event called "Downtown Summerfest Street Party" which shall be a social event with musical band(s) and refreshments during the period specified in this Agreement, and for no other purpose.

(b) STMH may access the Washington Street portion of the Premises for event set-up starting at 7:00 p.m. on August 16, 2013, and the Randolph Avenue portion of the Premises starting at 10:00 a.m. on August 17, 2013. The actual event shall not commence until 2:00 p.m. on the afternoon of Saturday, August 17th. The bands shall be allowed to play starting at 2:00 p.m. on the afternoon of the 17th, but must conclude at 11:00 p.m. on the evening of August 17th. There shall be no use of amplified sound after 11:00 p.m. on August 17th. Subject to section 4 concerning the sale of alcoholic beverages, alcoholic beverage sales shall not commence until the 2:00 p.m. start time for the event and must conclude by August 17th at 12:00 midnight. Thereafter the crowd shall be allowed to disperse over the next two hours and the take-down of the event shall not begin until 2:00 a.m. on the morning of August 18th. Clean-up and take-down for the event shall conclude by 6:00 a.m. August 18, 2013. Road closure for the event shall be as provided for in section 3.

2. *Security; access.*

(a) STMH shall be responsible for the provision of security within the Premises during the period of the Agreement; provided, however, nothing herein shall be construed to limit or prevent any law enforcement officer or other official from entering upon the Premises to perform any law enforcement function or otherwise administer or enforce any federal, state or local law.

(b) At its sole costs and expense, STMH shall provide adequate security for the event, including a sufficient security detail, as approved by the Huntsville Police Department. STMH agrees that, at any time, the Huntsville Police Department's Incident Commander assigned to the event may require that the event be canceled, the conduct of the event modified, or prescribe

President of the City Council of the
City of Huntsville, Alabama
Date: _____

such other measures that might be necessary in the event of inclement weather conditions, security issues, threats to the health or safety of the sponsor(s) or attendees of the event or to the general public, or otherwise for public convenience or safety.

(c) To the extent the event is conducted outside the Premises on property owned by or leased to others, nothing herein shall be construed to limit or prevent any law enforcement officer or other official from entering upon said property to perform any law enforcement function or otherwise administer or enforce any federal, state or local law.

3. *Fencing; road closure.*

(a) At STMH's sole cost and expense, the City may erect or require STMH to erect a 6 foot high temporary fence at those locations specified by the City through its police department, in order to control access to the Premises or otherwise for security purposes. STMH understands and agrees that the actual fence location may be modified as directed by the City through its police department to provide for the public safety or convenience, to control access to the premises or otherwise for security purposes.

(b) Road closure preceding the event shall not be before 7:00 p.m., August 16, 2013, for Washington Street, and shall not be before 10:00 a.m., August 17, 2013, for Randolph Avenue. The roads shall be re-opened no later than 3:00 a.m. on the morning of August 18, 2013; provided, however, notwithstanding the foregoing, the City may require the streets to remain open for a longer period and be re-opened earlier at the discretion of the Huntsville Police Department.

(c) During the actual conduct of the event the Premises will be closed to persons or vehicles that are not participating in the event; provided, however, the City may allow access to any vehicle or person for purposes of public health, safety or convenience, or otherwise in the case of an emergency.

(d) Should the City, or those acting on its behalf, erect the fence, the STMH shall promptly reimburse or pre-pay City for all associated costs and expenses including the cost of labor and materials.

(e) If the City allows or requires STMH to erect the required fencing, STMH shall not drill holes in any existing concrete, asphalt, brick or other impervious surface and the fence shall not be anchored in concrete or any other permanent material.

4. *Alcoholic beverages.*

(a) STMH intends that the event will include the retail sale of alcoholic beverages for on-premise consumption. In such event, STMH shall have secured all licensing necessary for such sale by at least one (1) week prior to the commencement date for the event unless the time specified by the state's or City's alcoholic beverage control laws requires an earlier time. Failing therein, the sale of alcoholic beverages shall not be permitted for the Premises.

(b) In addition to the Premises, should STMH include private property within the event area that is to be included within the area to be licensed to sell alcoholic beverages for on-premise consumption, then the Premises and the additional area shall be hereinafter referred to as the "licensed area". STMH agrees to prevent any person from bringing alcoholic beverages into the licensed area and to prevent any person from leaving the licensed area while in possession of any alcoholic beverage and to this end the Huntsville Police Department may require security control at access points. STMH further agrees to post signs at each access way into the licensed area informing patrons or visitors that: (1) access will be denied to any person who attempts to bring alcoholic beverages into the licensed area, and (2) that no alcoholic beverages will be allowed to be removed from the licensed area.

(c) The sale of alcoholic beverages shall not start until 2:00 p.m. on August 17th, 2013, and shall cease at 12:00 midnight on August 17, 2013. The price of alcoholic beverages shall remain constant throughout the event.

(d) STMH shall abide by all alcoholic beverage control laws of the state and city including the regulations of the Alabama Alcoholic Beverage Control Board. STMH shall provide tamper-proof measures that identify persons of legal drinking age.

5. *Conditions of use.*

(a) STMH agrees to comply with all ordinances, laws, rules and regulations pertaining to the use of the Premises and shall not use the Premises in an unlawful manner nor create or allow to exist any nuisances or trespass nor deface or damage the Premises.

(b) STMH shall obtain and maintain all licenses and permits and pay all fees necessary or required to hold the event. City may require STMH to provide proof of proper permitting or licensure prior to or during the event.

(c) STMH agrees that no food or beverage shall be served in glass containers during the event or brought onto the Premises in such containers. All containers used for the event shall be plastic or paper.

(d) STMH shall install on the Premises at its own cost and expense portable toilets sufficient in number for the use of the event attendees during the Agreement period. In addition, STMH shall be responsible for providing adequate security lighting for the Premises during the event. In the event STMH installs a stage or other performance area upon the Premises, STMH shall abide by all applicable laws for said installation including any applicable building, fire and electrical codes, and in no event shall any holes be drilled in any existing concrete, asphalt, brick or other impervious surface. Any such stage, tent or other temporary structure erected for the event shall not be anchored in concrete or any other permanent material, or otherwise deface or damage any portion of the Premises.

(e) This Agreement hereby incorporates as if fully set out herein each condition and requirement established in the special event permit issued for the event and a violation thereof shall constitute a breach of this Agreement.

(f) STMH shall reimburse the City for its costs and expenses relative to the event including personnel, labor and material costs. The City may require STMH to pre-pay some or all of its estimated costs and expenses prior to the event or to reimburse the City within thirty (30) days after the event.

(g) STMH shall, at all times, maintain handicap access throughout the Premises. STMH shall maintain the Premises in such a way so as to meet the Americans with Disabilities ACT (ADA) standards for accessibility.

(h) To the extent the event is conducted on property outside the Premises on property owned by or leased to others, STMH shall be solely responsible for obtaining the right to conduct the event on said property and nothing herein shall be construed to allow the STMH to such property.

6. *Indemnification; non-liability.* The City, its officials, officers, employees, agents, contractors, and volunteers performing an authorized city function, shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by the City, its officials, officers, employees, agents, contractors or volunteers performing an authorized city function; STMH, its agents, employees or contractors; or by any person who may at any time be using or occupying or visiting the Premises or be in, on or upon the same if such loss, injury, death, or damage shall be caused or result from or arise out of the negligence of STMH, its agents, employees or contractors, or of any occupant, visitor or user of any portion of the Premises under the terms of this Agreement. STMH shall indemnify and hold harmless and does hereby agree to indemnify and hold harmless the City, its officials, officers, employees, agents, contractors and volunteers performing an authorized city function, (hereinafter referred to as "indemnitees") from and against any and all claims, liability, loss, judgments, suits, penalties, costs, expenses and damages aforesaid (including but not limited to reasonable attorneys' fees and expenses and court costs and fees, through appeal). STMH's duty to indemnify shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of the indemnitees. STMH's duties hereunder shall survive the termination or expiration of this Agreement.

Nothing contained in this section 6 shall be construed as a waiver of any immunity of statutory protection of the City of Huntsville, Alabama, and no third party may expand any recovery against the City due to the STMH's duty of indemnification.

7. *Restoration.* STMH agrees to provide for and pay all costs and expenses associated with clean-up of, and damage to, the City's property, both within and outside of the Premises which relate to the STMH's use of the Premises. The Premises shall be cleaned and restored entirely by the STMH no later than the end of the Agreement term, to the sole satisfaction of the City.

8. *Insurance.* STMH shall obtain and maintain in effect throughout the term of this agreement, bodily injury and property damage liability insurance, written on an occurrence basis, covering the Premises in a minimum amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for the injury to or death of any one person and ONE MILLION DOLLARS (\$1,000,000.00) for the injury to or death of any number of persons in one

occurrence, and property damage liability insurance in the amount of ONE MILLION DOLLARS (\$1,000,000.00). Such insurance shall specifically insure STMH against all liability assumed by STMH hereunder as well as liability imposed by law, and shall insure both the City, its officials, officers, employees, agents, contractors and volunteers performing an authorized city function, who shall be named as an Additional Insureds, and STMH, but shall be so endorsed as to create the same liability on the part of the insurer as though a separate policy had been written for the City and STMH. Such policy of insurance shall be issued by a company authorized to engage in the insurance business in the state of Alabama with an A. M. Best's rating of no less than "A" and shall be approved by the City Attorney of the City of Huntsville prior to STMH entering upon the Premises upon the terms of this Agreement. City may, at any time, require STMH to provide a Certificate of Insurance or other proof of insurance.

9. *Rent.* STMH shall pay to the City the sum of \$500.00 (five hundred and no/100 dollars) as for the use of the Premises; which shall be paid in full by STMH within 24 hours of the execution of this Agreement.

10. *Non-compliance.* In the event of any breach of any condition or term of this Agreement, the City may cancel the event and terminate this Agreement at any time. Huntsville Police Department, Huntsville Fire and Rescue or any other official of the city of Huntsville acting within the line and scope of his/her authority may take any action they deem necessary in order to protect the public health or safety, to prevent damage or destruction to public or private property, or to enforce applicable laws.

11. *Miscellaneous.*

(a) This Agreement shall not be amended except by written instrument signed by the parties hereto. This Agreement, together with all exhibits, constitutes the entire agreement between the parties and shall be interpreted under and according to the Laws of the State of Alabama. This Agreement shall be binding upon and inure to the benefit of STMH, its successors and permitted assigns, and the City, its successors and assigns.

(b) STMH shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms or conditions, nor shall such failure on the part of the City be construed or held to be a waiver of the City's rights thereafter to strictly enforce any provision of this Agreement.

(c) The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

(d) If, for any reason or no reason, any agreement(s), provision(s), or term(s) of this Agreement (whether material to the bargain of City and STMH or not) should be declared illegal, null and void, unconstitutional or unenforceable, in whole or in part, by any court of competent jurisdiction, the offending portion of this Agreement shall be deemed severed herefrom as though the same was never a part hereof; provided, however, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, covenants, provisions and terms.

(e) **Conjunctions.** In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

- (1) "And" indicates that all the connected terms, conditions, provisions or events apply.
- (2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

(f) **"Includes".** The term "includes" or "including" does not limit a term to a specified example.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under their respective seals and delivered as of the date first above written.

THE CITY OF HUNTSVILLE, ALABAMA

By: _____ (seal)
Tommy Battle, Mayor

ATTEST:

Charles E. Hagood
City Clerk-Treasurer

SAMMY T'S MUSIC HALL, LLC.

By:  _____ (seal)
Samuel "Sammy" Taylor
Its: Member/Manager

[Notaries on following page]

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that TOMMY BATTLE and CHARLES E. HAGOOD, whose names as Mayor and City Clerk-Treasurer of the City of Huntsville, a municipal corporation, are signed to the foregoing agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation as of the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2013.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Samuel "Sammy" Taylor, whose name as member/manager of Sammy T's Music Hall, LLC., is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such member/manager and with full authority, executed the same voluntarily for and as the act of said limited liability company as of the day the same bears day.

GIVEN under my hand and official seal this the 11th day of June, 2013.

Jennifer Cox
Notary Public
My Commission Expires: 9-13-2016

EXHIBIT A

